

No. 13,745

IN THE

United States Court of Appeals

For the Ninth Circuit

WILLIAM Y. FONG, as Guardian ad
Litem for FONG WONE JING, FONG
HUNG WING and FONG NGAR JING,

Appellants,

VS.

JOHN FOSTER DULLES, as Secretary of
State,

Appellee.

Upon Appeal from the United States District Court
for the Northern District of California,
Southern Division.

APPELLANTS' PETITION FOR A REHEARING.

JOSEPH S. HERTOGS,

580 Washington Street, San Francisco 11, California.

Attorney for Appellants

and Petitioners.

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U.S. DISTRICT COURT

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*To the Honorable William Denman, Chief Judge, and
to the Honorable Clifton Matthews and Honorable
Homer T. Bone, Associate Judges of the United
States Court of Appeals for the Ninth Circuit:*

Appellants in the above-entitled cause, present this,
their petition for a rehearing of the above-entitled
cause, and in support thereof, respectfully show:

I.

That this petition for rehearing is predicated upon favorable consideration of the Motion to Correct Error heretofore filed in this Court.

II.

That this Court in its decision dated August 18, 1954, stated:

“We think the evidence sustains the findings of the court. As to one of the appellants the proof is that she was born more than one year after her alleged father’s departure from China. As to another, a girl, there was testimony she is a boy. As to the third, there is testimony that he was living with his family in China in 1935, whereas the pleadings and proof show he was not born until 1936.”

III.

That the corrected record reflects facts contrary to the expression of this Court as quoted above, to-wit:

(a) Fong Lim Fong, alleged father of appellant Fong Wone Jing, arrived in the United States six months and ten days prior to her birth;

(b) That the name of the child born on January 30, 1936, is Fong Hung Wing (T. 30); that this child was a boy as indicated by the testimony of the witness Yee Song Mee.

(c) That at the time of arrival of Yee Song Mee in China in 1935 there was then residing with

Fong Lim Fong and his wife Jee Shee in the Gong Mee Village their son Fong Hung Fong and their daughter Fong Wone Jing (T. 30). That the son Fong Hung Fong was born in China on November 3, 1932 (T. 52).

IV.

That the decision of this Court was based upon inadvertent defects and errors appearing in the Transcript of Record; that the corrected record shows uncontroverted evidence establishing the claimed relationship and United States nationality of these appellants; and that the appellants have sustained the burden of proof in accordance with the principle announced by this Court in *Ly Shew v. Dulles*, Case No. 13,808, decided August 18, 1954.

For the reasons stated above, appellants request that a rehearing be granted and that on such rehearing the judgment of this Court and the United States District Court be reversed.

Dated, San Francisco, California,
September 15, 1954.

Respectfully submitted,
JOSEPH S. HERTOFS,
*Attorney for Appellants
and Petitioners.*

CERTIFICATE OF COUNSEL

I hereby certify that I am counsel for appellants and petitioners in the above-entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, San Francisco, California,
September 15, 1954.

JOSEPH S. HERTOGS,
*Attorney for Appellants
and Petitioners.*

